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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

DIANA AKINS,

Plaintiff,

V.

B. MOSS; et al..

Defendants.

2:21-cv-01317-KJM-DMC-P

**DEFENDANTS' MEMORANDUM OF
POINTS AND AUTHORITIES
SUPPORTING MOTION FOR
JUDGMENT ON THE PLEADINGS**

Judge: The Hon. Dennis M. Cota

Trial Date: Not Set

Action Filed: July 26, 2021

INTRODUCTION

Samuel Asa Wynn (deceased), a former California inmate, filed this action under 42 U.S.C. § 1983. Diana Akins substituted in as Plaintiff on June 24, 2025. This case proceeds on the July 27, 2021, Complaint. (ECF No. 1 (Compl.).) Plaintiff alleges that Defendants Correctional Officers Moss and Mundy were deliberately indifferent to Wynn’s health by serving contaminated food on one isolated occasion. Because an isolated claim of contaminated food is insufficient to state a cognizable constitutional claim under the Eighth Amendment, Defendants’ motion for judgment on the pleadings should be granted.

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FACTUAL ALLEGATIONS

Plaintiff alleges that on February 21, 2021, during the COVID-19 pandemic, Officer Moss spit into a garbage can filled with inmate lunches. (Compl. at 3-4.) Officer Mundy allegedly witnessed Officer Moss spit into the garbage can and “still proceeded to hand [Wynn] and [his cellmate] two lunches that had wet, contaminated substances on them.” (*Id.* at 3.) Wynn allegedly confronted Officer Mundy about the contaminated lunches. (*Id.* at 3-4.) Plaintiff alleges that Officer Mundy handed Wynn and his cellmate two more lunches. (*Id.* at 4.) Plaintiff alleges that Wynn stopped eating or accepting food from Officers Mundy and Moss and developed psychosis disorder as a result of this incident. (*Id.*)

LEGAL STANDARD

Like a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a motion for judgment on the pleadings under Rule 12(c) challenges the legal sufficiency of the opposing party’s pleadings. A party may move for judgment on the pleadings “[a]fter the pleadings are closed—but early enough not to delay trial.” Fed. R. Civ. P. 12(c). In assessing a motion for judgment on the pleadings, a court must “accept all factual allegations in the complaint as true and construe them in the light most favorable to the non-moving party.” *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009) (cleaned up). “Judgment on the pleadings is properly granted when there is no issue of material fact in dispute, and the moving party is entitled to judgment as a matter of law.” *Id.* “Rule 12(c) is functionally identical to Rule 12(b)(6) and [] the same standard of review applies to motions under either rule.” *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 n.4 (9th Cir. 2011) (cleaned up).

ARGUMENT

“Prison officials have a duty to ensure that prisoners are provided adequate shelter, food, clothing, sanitation, medical care, and personal safety.” *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000). However, not every injury that a prisoner sustains while in prison represents a constitutional violation. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006). Indeed, the Constitution does not mandate comfortable prisons. *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981). “Extreme deprivations are [therefore] required to make out a conditions-of-confinement

1 claim.” *Hudson v. McMillian*, 503 U.S. 1, 9 (1992). To maintain an Eighth Amendment claim, a
 2 prisoner must show that prison officials were deliberately indifferent to a substantial risk of harm
 3 to his health or safety. *Farmer v. Brennan*, 511 U.S. 825, 847 (1994).

4 “The circumstances, nature, and duration of a deprivation of these necessities must be
 5 considered in determining whether a constitutional violation has occurred.” *Johnson*, 217 F.3d at
 6 731 (cleaned up). With respect to food, the “Eighth Amendment requires only that prisoners
 7 receive food that is adequate to maintain health; it need not be tasty or aesthetically pleasing.”
 8 *LeMaire v. Maass*, 12 F.3d 1444, 1456 (9th Cir. 1993). “The fact that food occasionally contains
 9 foreign objects . . . while unpleasant, does not amount to a constitutional deprivation.” *Id.*
 10 (cleaned up).

11 For purposes of this motion, Defendants do not dispute any material facts alleged in the
 12 Complaint. Plaintiff alleges nothing more than an isolated incident of food allegedly
 13 contaminated with a foreign object—spit—on February 21, 2021, when the COVID-19 pandemic
 14 was ongoing. (Compl. at 3-4.) This is insufficient to state a cognizable constitutional claim
 15 under the Eighth Amendment. *See e.g., LeMaire*, 12 F.3d at 1456; *Islam v. Jackson*, 782 F. Supp.
 16 1111, 1114-15 (E.D. Va. 1992) (serving one meal contaminated with maggots and meals under
 17 unsanitary conditions for thirteen days was not cruel and unusual punishment, even though
 18 inmate suffered symptoms of food poisoning); *Willard v. Cal. Dep’t of Corr. & Rehab.*, No.
 19 19cv1074-AWI-SAB (PC), 2019 U.S. Dist. LEXIS 188512, at *22 (E.D. Cal. Oct. 29, 2019)
 20 (isolated and sporadic claims of contaminated food insufficient to state a claim under the Eighth
 21 Amendment); *Johnson v. Dickinson*, No. CV 14-3390-VBF (SP), 2017 U.S. Dist. LEXIS 236182,
 22 at *27 (C.D. Cal. Mar. 30, 2017) (single, isolated occurrence, in which plaintiff neither ate the
 23 food nor suffered injury from it insufficient to state Eighth Amendment claim); *Bennett v. Misner*,
 24 No. Civ 02-1662-HA, 2004 U.S. Dist. LEXIS 19568, at *63 (D. Or. Sept. 17, 2004) (“Neither
 25 isolated instances of food poisoning, temporary lapses in sanitary food service, nor service of
 26 meals contaminated with maggots are sufficiently serious to constitute an Eighth Amendment
 27 violation.”).

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1 The existence of the COVID-19 pandemic does not alter this analysis because the pandemic
2 did not make the alleged deprivation more serious. In other words, even though the pandemic
3 was ongoing on February 21, 2021, there was still only one isolated and short-term deprivation of
4 lunch. (Compl. at 3-4.) In fact, Plaintiff alleges that Wynn received a second lunch after
5 complaining about the lunch allegedly contaminated with spit. (*Id.*)

6 This Court has already found the facts alleged by Plaintiff are insufficient to state a
7 cognizable claim under the Eighth Amendment. In *Martinez v. Mundy*, Case No. 2:21-cv-01872-
8 DAD-DMC (E.D. Cal.), Wynn’s cellmate—Martinez—asserted an Eighth Amendment claim
9 arising from the same February 21, 2021, incident. See *Martinez v. Mundy*, No. 2:21-cv-01872-
10 DAD-DMC at ECF No. 21 at 2 (quoting ECF No. 10, at 2). In the *Martinez* case, Officer Mundy
11 moved to dismiss Martinez’s claim on the grounds that a single instance of being served
12 contaminated food was insufficient to state a deliberate indifference claim under the Eighth
13 Amendment and that the COVID-19 pandemic was irrelevant. *Id.* at ECF Nos. 31, 40. This
14 Court granted Officer Mundy’s motion, noting that “[r]egardless of the global pandemic, plaintiff
15 alleges only a single, isolated occurrence of being served contaminated food, and . . . that single
16 alleged incident is insufficient to state a cognizable Eighth Amendment deliberate indifference
17 claim.” *Id.* at ECF No. 41 at 2.

18 Because there is no issue of material fact in dispute and an isolated incident of allegedly
19 contaminated food is insufficient to state an Eighth Amendment conditions-of-confinement claim,
20 Defendants are entitled to judgment as a matter of law. See *Fleming*, 581 F.3d at 925 (“Judgment
21 on the pleadings is properly granted when there is no issue of material fact in dispute, and the
22 moving party is entitled to judgment as a matter of law.”).

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CONCLUSION

The Court should grant Defendants' motion for judgment on the pleadings because an isolated incident of allegedly contaminated food is insufficient to state an Eighth Amendment conditions-of-confinement claim.

Dated: June 25, 2025

Respectfully submitted,

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